

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 445 be amended to read as follows:

- 1 Page 8, between lines 31 and 32, begin a new paragraph and insert:
- 2 "SECTION 6. IC 20-17 IS ADDED TO THE INDIANA CODE AS
- 3 A **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,**
- 4 **2001]:**
- 5 **ARTICLE 17. EMPLOYMENT PROTECTION FOR**
- 6 **EDUCATIONAL EMPLOYEES**
- 7 **Chapter 1. Definitions**
- 8 **Sec. 1. The definitions in this chapter apply throughout this**
- 9 **article.**
- 10 **Sec. 2. "Board" refers to the Indiana education employment**
- 11 **relations board established by IC 20-7.5-1-9.**
- 12 **Sec. 3. "Classification seniority" means the length of the most**
- 13 **recent continuous service in an employee's classification with a**
- 14 **single employer.**
- 15 **Sec. 4. "Employee" refers to a noncertificated employee (as**
- 16 **defined in IC 20-7.5-1-2(g)) of a school corporation.**
- 17 **Sec. 5. "Employer" means a school employer, as defined in**
- 18 **IC 20-7.5-1-2(c).**
- 19 **Sec. 6. "Just cause", as the term pertains to the discipline of**
- 20 **employees, includes any of the following:**
- 21 **(1) Falsification of an employment application to obtain**
- 22 **employment through subterfuge.**
- 23 **(2) Knowing violation of a reasonable and uniformly enforced**
- 24 **rule of an employer.**

(3) Unsatisfactory attendance, if the employee is unable to show cause for the employee's absences or tardiness.

(4) Damaging the employer's property through willful negligence.

(5) Refusing to obey lawful instructions.

(6) Reporting to work under the influence of alcohol in a state of intoxication or a controlled substance (as set forth in IC 35-48-2), consuming alcohol or a controlled substance on the employer's premises or while operating the employer's vehicles, or while driving a commercial motor vehicle committing a disqualifying offense under IC 9-24-6-8.

(7) Conduct endangering the safety of the employee or any other employees.

(8) Conduct endangering the safety of students.

(9) Any breach of a duty in connection with the employee's employment that is reasonably owed the employer by an employee.

(10) Commission of child molesting (IC 35-42-4-3), child exploitation (IC 35-42-4-4), vicarious sexual gratification (IC 35-42-4-5), child solicitation (IC 35-42-4-6), child seduction (IC 35-42-4-7), or sexual misconduct with a minor (IC 35-42-4-9).

Sec. 7. "School corporation" has the meaning set forth in IC 20-7.5-1-2(a).

## **Chapter 2. Classification**

Sec. 1. An employee may not attain classification seniority until completion of a probationary period of thirty (30) days, at which time classification seniority relates back to the employee's date of hire.

Sec. 2. If a permanent or prolonged reduction within any classification of employees is determined necessary by an employer, classification seniority shall be the determining factor in making the reduction and any subsequent recall from reduction.

## **Chapter 3. Representation**

Sec. 1. An employee is entitled to representation by an employee organization or legal counsel, or both, during any proceeding under this article.

## **Chapter 4. Discipline and Discharge of Employees**

Sec. 1. An employee may be disciplined before suspension or discharge only for just cause as enumerated in IC 20-17-1-6(1) through IC 20-17-1-6(7), IC 20-17-1-6(9), and must be:

(1) informed in writing of all details of any offense or violation:

(A) with which the employee is charged; and

(B) that would constitute just cause for discipline; and

(2) given a reasonable time to correct the behavior constituting the identified offense or violation described in

1 clause (A).

2 **Sec. 2. A discharge may not take effect unless, at least ten (10)**  
 3 **days before the effective date of the discharge, the employer:**

- 4 (1) provides the employee with written notice of all offenses or  
 5 violations for which the employee is being discharged; and  
 6 (2) affords the employee an opportunity to request, in writing,  
 7 a hearing before an impartial hearing examiner under  
 8 IC 20-17-5.

9 **Sec. 3. A request for a hearing under IC 20-17-5 must be made**  
 10 **by an employee before the effective date of the discharge. If the**  
 11 **employee fails to request the hearing, the employee is considered**  
 12 **discharged on the effective date of the employer's written notice.**

13 **Sec. 4. If an employee requests a hearing under IC 20-17-5, the**  
 14 **employer may suspend the employee with pay upon the effective**  
 15 **date of discharge, pending the determination of the hearing**  
 16 **examiner.**

17 **Sec. 5. The employer may, without notice, suspend with pay an**  
 18 **employee pending discharge if:**

- 19 (1) the employer reasonably believes the nature of the  
 20 employee's misconduct warrants immediate suspension; or  
 21 (2) the suspension is for just cause as enumerated in  
 22 IC 20-17-1-6(8) and IC 20-17-1-6(10).

23 **In this case, the employer shall afford to the employee, after the**  
 24 **suspension, the formal procedures described in section 1(1) of this**  
 25 **chapter.**

## 26 **Chapter 5. Hearings**

27 **Sec. 1. Upon receipt of a written request by an employee subject**  
 28 **to discharge as described in IC 20-17-4-2, the employer shall**  
 29 **request the board to appoint a hearing examiner to preside over**  
 30 **the hearing.**

31 **Sec. 2. A hearing examiner has the following duties:**

- 32 (1) To give the notice provided in section 3 of this chapter.  
 33 (2) To schedule the hearing at a specified date, time, and  
 34 place, with the authority to postpone the date and time or  
 35 change the place for any good cause.  
 36 (3) To take full charge of the hearing in accordance with  
 37 IC 4-21.5-3-25 and IC 4-21.5-3-26, subject to this chapter.  
 38 (4) To render a written decision in the matter, including  
 39 findings of fact and conclusions of law, that is binding on all  
 40 parties as of the date of the decision and that contains a notice  
 41 of the right to seek review of the decision before the board.  
 42 (5) To file the original of the hearing examiner's findings,  
 43 conclusions, and decision, along with the record in the case,  
 44 with the board.  
 45 (6) To cause a copy of the hearing examiner's findings,  
 46 conclusions, and decision to be served upon each of the  
 47 parties.

1       **Sec. 3. The following constitutes the hearing procedures by**  
2 **which an employee may be discharged:**

3       **(1) The hearing examiner, not more than five (5) days after**  
4 **the hearing examiner's appointment, shall send notice to the**  
5 **parties of the date, time, and location set for the hearing.**

6       **(2) The hearing examiner shall conduct the hearing under**  
7 **IC 4-21.5-3-25 and IC 4-21.5-3-26.**

8       **Sec. 4. Any party to the hearing who is aggrieved by the decision**  
9 **of the hearing examiner may appeal the decision to the board as**  
10 **follows:**

11       **(1) Not more than twenty (20) days after the date the hearing**  
12 **examiner files the hearing examiner's findings, conclusions,**  
13 **and decision, the party aggrieved by the decision may file a**  
14 **petition for review of the hearing examiner's findings,**  
15 **conclusions, and decision. The filing and pendency of a**  
16 **petition for review shall operate to stay the effectiveness of the**  
17 **decision unless otherwise ordered by the board.**

18       **(2) The petition for review must be in writing and be filed**  
19 **with the board. At the same time, a copy of the petition for**  
20 **review must also be filed with the opposing party. The petition**  
21 **must specifically set forth the reasons for the objections of the**  
22 **aggrieved party to the decision of the hearing examiner.**

23       **(3) Not more than ten (10) days after the date on which the**  
24 **petition for review is filed with the board, any party to the**  
25 **proceeding before the hearing officer may file a reply to the**  
26 **petition for review on the board with simultaneous service**  
27 **upon the opposing party. The reply must specifically set forth**  
28 **the party's reply to the objections of the aggrieved party to**  
29 **the decision of the hearing examiner.**

30       **(4) Not more than fifteen (15) days after the filing of a reply**  
31 **to the petition for review, if any, the board shall render a final**  
32 **decision consisting of the board's findings of fact, conclusions**  
33 **of law, and final order in the matter.**

34       **(5) A party to the board's final decision may seek judicial**  
35 **review under IC 4-21.5-5.**

36       **Sec. 5. The board is authorized to enforce the board's orders**  
37 **and to take other appropriate action, including reinstating an**  
38 **employee with back pay.**

39       **Chapter 6. Construction**

1       **Sec. 1. This article may not be construed to limit the application**  
2       **of an agreement negotiated between an employer and the**  
3       **recognized representative of employees with a particular**  
4       **employer.".**

5       Renumber all SECTIONS consecutively.  
      (Reference is to ESB 445 as printed April 6, 2001.)

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Representative Kersey